In the
Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM
Petitioners

versus

STATE OF LOUISIANA
Respondent

RESPONSE IN OPPOSITION TO A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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INDEX

LIST OF AUTHORITIES

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DONNIE FRANKLIN COLLUM AND
SCOTTY LYNN COLLUM

VERSUS

STATE OF LOUISIANA

REPLY BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The State of Louisiana, respondent herein, prays that this court deny the issuance of a Writ of Certiorari, to review the judgment and decision of the Supreme Court of the State of Louisiana affirming the convictions and upholding the validity of the guilty pleas of Donnie Franklin Collum and Scotty Lynn Collum for four counts of second degree murder in the Seventeenth Judicial District Court, Lafourche Parish, Louisiana.

STATEMENT OF FACTS

On May 27, 1977 Jessie Collum, his wife, Lenora, and their children, Jeffrey, age 9, and Anna, age 6, were killed in the Collum trailer home located in the Four Point Heights subdivision, Lafourche Parish, Raceland, Louisiana. All of these individuals had been shot several times and Jessie Collum had also been stabbed. Two days later on May 29, 1977 Donnie Collum, age 15 and Scotty Collum, age 14, the sons of Jessie Collum by a prior marriage were stopped by police authorities in Benson, Arizona. Both youths admitted to the Benson, Arizona authorities that they had taken the

automobile without the knowledge or permission of Jessie Collum. As a result, the vehicle was left in Arizona and the authorities returned Donnie Collum and Scotty Collum to their mother, Mrs. Peggy Mendoza in Victorville, County of San Bernadino, California.

On Wednesday, June 1, 1977 the bodies of the Collum family were discovered. On this same date the Lafourche Parish Sheriff's Office sent out nation wide bulletins for the location of the Cadillac automobile, and also seeking information concerning Donnie Collum and Scotty Collum. On June 3, 1977 the San Bernadino County Sheriff's Office notified the Lafourche Parish Sheriff's Office of the location of both Donnie and Scotty Collum. They further advised that the Cadillac authomobile was in Benson, Arizona and that both individuals had admitted taking the automobile without the knowledge or permission of Jessie Collum.

At approximately 4:30 p.m. Central time, (2:30 p.m. Pacific time) warrants were issued in Lafourche Parish, 17th Judicial District Court for the arrest of Donnie Collum and Scotty Collum for the theft of the 1974 Cadillac. The affidavits supporting these warrants were filed into evidence in these proceedings. The information concerning the arrest warrants was telephoned from Lafourche Parish to the San Bernadino County Sheriff's Office. Sergeant Charles Sodaro, Detective Robert Woodrum, and Detective Dennis Searcy in response to this information proceeded to the trailer park where Donnie and Scotty Collum were apprehended. Mrs. Peggy Mendoza, the mother of Donnie and Scotty Collum, was present at the time of the arrest. She was advised that they were being taken into custody for Louisiana authorities on the basis of a warrant for auto theft. Detective Woodrum read the *Miranda* warnings to both Donnie

and Scotty Collum from a Miranda card that he carried on his person. Both individuals advised that they understood their rights. Neither of the two appeared to be under the influence of alcohol or drugs at this time. When they arrived at the Victorville Sheriff's Office sub-station they were placed in separate interview rooms.

At approximately 3:00 p.m. on June 3, 1977, Detective Sodaro and Woodrum interviewed Donnie Collum. During this interview, the defendant admitted the car theft. He was reminded of his *Miranda* rights a second time and then told that his father had been shot to death. At this time he became very nervous. The interview was therefore terminated at approximately 3:30 p.m.

At approximately 4:00 p.m. on June 3, 1977, Detective Woodrum and Sodaro interviewed Scotty Collum. They reminded him of his *Miranda* rights. At this time Scotty gave a complete statement concerning his participation and Donnie's participation in the quadruple murders which had occurred in Lafourche Parish. After this, the police officers commenced to take a taped interview from Scotty which lasted approximately 50 minutes. This taped statement was also offered in evidence at the hearing on the Motion to Suppress.

At approximately 8:00 p.m. on June 3, 1977, Sergeant Sodaro and Detective Woodrum again spoke to Donnie Collum. Donnie had requested to speak to the officers. Prior to this conversation, he was again reminded of his *Miranda* rights; indicated that he understood them, and consented to talk to the officers. At his request, he was permitted to hear a small portion of the taped statement that Scotty Collum had previously given to the officers. At 8:11 p.m. Donnie Collum commenced a taped statement

which was concluded at 8:40 p.m. This taped statement of Donnie Collum has been filed into evidence in these proceedings.

Later that night Major Norman Diaz and Detective Dennis Rodrigue of the Lafourche Parish Sheriff's Office arrived in Victorville, California. They proceeded immediately to the detention center where Major Diaz spoke with Mrs. Mendoza. Major Diaz and Detective Rodrigue then proceeded to interview both Donnie and Scotty Collum. These interviews were also taped, and have also been offered into evidence in these proceedings. On July 18, 1977 a Motion to Suppress the taped statements was filed by the defendant herein and this matter was heard on August 30, 31, and September 7, 1977. On December 29, 1977 the Motion to Suppress filed by the defendant was overruled and dismissed. Subsequently, on February 24, 1978, the defendant Donnie Collum entered a plea of guilty to four separate counts of second degree murder. The Court sentenced the defendant to four life sentences without the benefit of probation or parole for a period of forty years on each sentence, all of the sentences to run consecutively. The pleas of guilty were entered with the stipulation and understanding that the defendant reserve his right to appeal the ruling of the Motion to Suppress the confessions.

ARGUMENTS IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRITS

1.

THE LOUISIANA SUPREME COURT DECISION OF *STATE OF LOUISIANA IN THE INTEREST OF ANDREW DINO* SHOULD NOT BE APPLIED RETROACTIVELY; THEREFORE, THAT DECISION IS INAPPLICABLE TO THE PRESENT CASE.

A.

On June 15, 1978 the Louisiana Supreme Court announced its decision in *State of Louisiana in the Interest of Dino*, 359 So 2d 586 (1978). By that decision the Louisiana Supreme Court decided that a confession of a juvenile was not admissible in evidence unless the juvenile actually consulted with an attorney or an adult before waiving his right to silence. The quadruple murders for which Donnie and Scotty Collum were arrested occurred on May 27, 1977. Both Donnie and Scotty Collum entered guilty pleas on February 24, 1978, approximately four months prior to the *Dino* decision. The guilty pleas were entered with the reservation of rights to appeal the ruling on the motion to suppress the confession. Their appeals were returnable to the Louisiana Supreme Court on May 2, 1978.

The State of Louisiana readily concedes that the subsequent guidelines announced in *Dino* were not compiled with in the present case. No attorney or parent actually consulted with the defendants during the interrogation. However, the State submits that the *Dino* decision should not be applied retroactively and the present case should be governed by

the "totality of circumstances" test; the rule of law in Louisiana and in the Federal Courts prior to *Dino*.

The present crime, the present confessions, and the present guilty pleas were entered prior to June 15, 1978, the effective date of the *Dino* decision. This Court and the Louisiana Supreme Court have held in similar cases that such decisions would be given prospective application only and would not apply retroactively. See *Johnson Vs. New Jersey*, 384 U.S. 719 86 Sup. Ct. 1772, 16 L.Ed. 2d 882 (Sup. Ct. 1966). *State Vs. Evans*, 249 La. 861, 192 So 2d 103 (1966). *State Vs. Hudgins*, 259 La. 83, 249 So 2d 532 (1971).

The *Dino* decision, and its impact on police custodial interrogation of juveniles in Louisiana, may be likened to the United States Supreme Court decision in *Miranda Vs. Arizona*, 384 U.S. 436 (1966). Both *Dino*, which requires that an attorney or adult consult with the juvenile, and *Miranda*, which requires the giving of certain warnings or rights, dealt with an absolute prerequisite to the admissibility of an in custody confession. The United States Supreme Court in *Johnson Vs. New Jersey*, 394 U.S. 719 (1966) decided that the *Miranda rule* would not be given retroactive effect and would apply only to cases in which the trials commenced after the effective date of the decision. Although *Dino* announced an additional state safeguard, greater than the Federal safeguards of *Miranda*, the sole issue presented by petitioner's application should be one of voluntariness under the existing "totality of circumstances" test.

Prior to the *Dino* decision, the "totality of circumstances" test was well accepted in Louisiana as a basis for a determination of whether a juvenile knowingly and intelligently waived

his constitutional rights. *State Vs. Hill*, 354 So 2d 186 (La. 1977), *State Vs. Hall*, 350 So 2d 141 (La. 1977). Furthermore the "totality of circumstances" test was the prevailing rule throughout the nation at this time. *West Vs. United States*, 399 F. 2d 467 (5th Cir. 1968).

Considering the purpose of the rule announced in *Dino* and the justifiable reliance upon the "totality of circumstances" test, the State of Louisiana submits that an extremely detrimental effect upon the administration of justice would result from a retroactive application of the *Dino* rule which would require the release of all juveniles convicted on the basis of custodial interrogations under the "totality of circumstances" test. Such a far reaching decision, as in *Dino*, without prior judicial or legislative guidelines, should not be given retroactive application.

B.

If petitioner's Application for Writs is premised on the theory that the new *Dino* guidelines are Federally protected Constitutional guarantees, the State would suggest that the application for writs should be denied.

This Court has consistently refused to permit State Supreme Courts to impose greater Miranda restrictions as a matter of Federal Constitutional law. *Oregon Vs. Hass*, 420 U.S. 714 95 S. Ct. 1215 43 L. Ed 2d 570 (1975).

As a Federal Constitutional issue, the guidelines of Miranda are to be interpreted within their own explicity stated rationale and within the expressed terms and logic of the original opinion. *Oregon Vs. Mathiason*, 429 U.S. 492 97 S. Ct. 711 50 L. Ed. 2d 714 (1977). *Fare V. Michael C.*, 99

S. Ct. 3 (1978).

Consequently, any attempt to elevate the Louisiana guidelines of *Dino* to Federal Constitutional guidelines should be rejected by this Court. Therefore, the admissibility of a confession as a matter of Federal Constitutional law is to be determined by a review of the "Totality of Circumstances", which includes any factors that bear on the voluntariness of the confession. *Fare V. Michael C.*, No. 78-334, 99 S. Ct. – (June 20, 1979).

2.

WHETHER A JUVENILE CAN KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO COUNSEL, AND HIS RIGHT AGAINST SELF-INCRIMINATION, IS A QUESTION OF FACT TO BE DETERMINED BY A REVIEW OF THE "TOTALITY OF CIRCUMSTANCES". *STATE VS. HILL*, 354 So 2d 186 (La. 1977); *WEST VS. UNITED STATES*, 399 F. 2d 467 (5th Cir. 1968).

Application of the "totality of circumstances" test requires that the State sustain the burden of affirmatively proving that the waiver of rights by a juvenile was made freely and voluntarily. In making such a determination many factors should be considered; 1) the age of the accused, 2) the education of the accused, 3) the knowledge of the accused as to the charge, 4) whether the accused is held incommunicado, 5) whether the accused was interrogated before formal charges, 6) the method used in the interrogation, and 7) the length of interrogation. All of these factors, and any others, should be considered in arriving at a determination of whether or not a juvenile freely, knowingly, and voluntarily waived his constitutional rights

against self-incrimination by giving a confession.

The "totality of circumstances" in the present case shows that Donnie Collum, age 15, Scotty Collum, age 14 were no strangers to police procedure or to police authorities. They had previously had several juvenile delinquent encounters with the law. Furthermore, within six weeks of these quadruple murders they had been in police custody on at least two occasions. On the afternoon of their arrest, they were arrested in their mother's presence and advised of the basis of their arrest. Both were advised of their constitutional rights and again reminded approximately four or five times of these rights. Both were interrogated after a formal arrest warrant had been issued, and both were advised of the police intentions to question them concerning their father's death.

The interrogation of Donnie Collum lasted approximately thirty minutes, from 3:00 to 3:30 p.m. This interrogation ceased when the defendant became nervous and upset. The second interrogation of Donnie Collum lasted approximately forty minutes. He gave a taped interview at which time he admitted committing the four murders. This second interrogation was at the defendant's request. He also acknowledged that he was advised of his rights, constantly reminded of these rights, and that he had requested the second interview.

The interrogation of Scotty Collum likewise lasted less than an hour. Similarly Scotty Collum was advised of his rights and constantly reminded of those rights. He was advised that the police authorities wished to question him concerning his father's death. At this time, Scotty gave a tape recorded statement concerning his participation in the quadruple murders. Scotty Collum who had been arrested at approximately 2:30 p.m. (Pacific time), gave his tape record-

ed statement within two hours of his arrest.

These tape recorded interviews were offered into evidence by the State at the motion to suppress. They were heard by the trial judge. They were also heard by the Louisiana Supreme Court. They show a careful, slow and deliberate interview free of any hint of impropriety by the officers and show an unrestricted willingness on the part of the defendants to disclose even the most minute details of the quadruple murders.

The State of Louisiana suggest that the evidence and the record in this case clearly shows that Donnie Collum, age 15, and Scotty Collum, age 14, were well aware of their rights and indeed understood that they were giving a statement concerning their involvement in these four homicides. The evidence further shows that both the California authorities and the Louisiana authorities were extremely cautious in protecting the constitutional rights of the defendants. The entire testimony of all of the officers stands unimpeached and uncontradicted. The taped statements of Donnie Collum and Scotty Collum were indeed free and voluntary and were not the result of any outside influences or pressures.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Honorable Supreme Court of the United States should deny petitioner's Application for Writ of Certiorari.

Respectfully Submitted,

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CERTIFICATE

It is hereby certified that a copy of the foregoing response was this day served upon Ferdinand J. Kleppner, Attorney for Petitioners, 3224 North Turnbull Drive, Metairie, Louisiana 70002, by depositing same in the United States mail, postage prepaid.

THIBODAUX, LOUISIANA this 24th day of July, 1979.

WALTER K. NAQUIN, JR.
ASSISTANT DISTRICT
ATTORNEY
THIBODAUX, LAFOURCHE
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